

KATHLEEN GRIFFITH

IBLA 76-585      December 29, 1976

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting acquired lands simultaneous oil and gas lease offer ES-16054.

Affirmed.

1.      Oil and Gas Leases: Applications: Drawings

The prohibition in 43 CFR 3112.2-1(a)(2) against the filing by a simultaneous drawing oil and gas lease applicant of more than one entry card for the same parcel is only concerned with entry cards filed by the same applicant which indicate the same parcel number as shown on the posted notice. Such entry cards must be rejected regardless whether the card is fully executed or correct in all respects.

APPEARANCES: Kathleen Griffith, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Kathleen Griffith appeals from the decision dated March 25, 1976, of the Eastern States Office, Bureau of Land Management (BLM), rejecting her acquired lands oil and gas lease offer ES-16054. Appellant's entry card was drawn first in the simultaneous drawing held for parcel 8 on February 8, 1976. Subsequently, the BLM State Office discovered that she had filed a second entry card for the same parcel. The State Office then rejected both entry cards as violative of 43 CFR 3112.2-1(a)(2) and awarded the lease to the offeror with second priority, Jack L. McDowell.

The notice of lands available for oil and gas leasing (List 76-2) listed certain lands in T. 2 N., R. 1 W., L.M., Louisiana, as parcel 8. On her entry card drawn first, appellant identified the parcel applied for as number 8 and the State as "La." On the second card, she also identified the parcel as number 8 but printed the State as "Fla." The only Florida lands listed in the notice were numbered parcels 4 and 5.

Appellant argues that the second card was not a duplicate filing because it had an incorrect parcel number and therefore would have been rejected if drawn. She submits that since she filed only one "qualified" entry card, she had only one chance to win and that "there was no attempt at duplicate filing."

[1] Appellant's argument fails to consider the language of 43 CFR 3112.2-1(a)(2) concerning duplicate filings:

\* \* \* An offeror (applicant) is permitted to file only one offer to lease (entry card) for each numbered parcel on the posted list. Submission of more than one entry card by or on behalf of the offeror for any parcel on the posted list will result in the disqualification of all the offers submitted by that applicant for that particular parcel.

The question to be decided here is whether appellant submitted more than one card for the same parcel. The "Simultaneous Oil and Gas Drawing Card" which appellant filed is form 3112-1 (May 1974). In addition to the blocks for the number of the parcel applied for, this form has a space captioned "State," which is supposed to be filled in with the name of the state in which the parcel is located. The Board has upheld this procedure and affirmed the rejection of entry cards which omit the name of the state. E.g., Gerald G. Calhoun, 27 IBLA 362 (1976); Rexmull Manyeto, 25 IBLA 218 (1976); Ray Granat, 25 IBLA 115 (1976); Albert E. Mitchell III, 20 IBLA 302 (1975). Those decisions held that the offers must be rejected and not that BLM could ignore the defective offer if the applicant filed another offer in the drawing. Those decisions upheld the rejections of the entry cards because the language in 43 CFR 3112.2-1(a) requires that each entry card be "signed and fully executed," and not because the entry cards in question failed to identify the parcel applied for. We do not pass upon the question whether a card drawn first would be acceptable where it is completely executed but the state is not the state in which the parcel lies. This issue has not yet been squarely presented to this Board.

Regulation 43 CFR 3112.2-1(a)(2) refers only to the parcel number on the posted list. It makes no reference to whether a submitted entry card which is drawn first is fully executed or correct in all respects. Both cards submitted by appellant refer to parcel 8. Under 43 CFR 3112.2-1(a)(2) this is the only factor to be considered. Therefore, the BLM State Office was correct in holding that appellant filed "more than one entry card" for the same parcel and in rejecting both cards. See Arthur H. Davidson, 23 IBLA 15 (1975). The oil and gas regulations have been strictly construed to protect the interests of the United States and conflicting applicants. This construction is especially necessary for the simultaneous drawing procedure to prevent possible machinations which might thwart the intent of the regulations. The result reached here is the only result consistent with the literal language of the regulations and the policy reasons for a strict construction of the language.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Joan B. Thompson  
Administrative Judge

I concur:

---

Frederick Fishman  
Administrative Judge

## CHIEF ADMINISTRATIVE JUDGE FRISHBERG DISSENTING:

I would reverse the decision of the Eastern States Office, BLM, as inconsistent with our decisions in Gerald G. Calhoun, 27 IBLA 362 (1976); Rexmull Manyeto, 25 IBLA 218 (1976); Ray Granat, 25 IBLA 115 (1976); and Albert E. Mitchell, 20 IBLA 302 (1975), all of which treat incomplete drawing entry cards as wholly without effect.

While the case at bar involves an incorrectly completed, rather than incomplete, drawing entry card, the distinction is merely cosmetic. BLM has consistently required that these cards be fully executed and correct in all respects. We have sustained a decision by BLM holding a drawing entry card to be a nullity where it is completed in an incorrect or ambiguous manner. In Joseph A. Winkler, 24 IBLA 380, 382 (1976), we stated that:

Stamping the drawing entry card with the name of an agency as the ostensible offeror and then signing the card with an individual's signature is not a correct execution of the form. The lease offer was properly rejected and the BLM decision is so modified. When an ambiguity is created by an applicant on a drawing entry card, it is not the responsibility of the BLM to speculate about applicant's intention, and necessarily to resolve the ambiguity in his favor.

The case at hand involves a mistake sufficient to render the incorrectly completed card void and of no effect had that card been selected first in the drawing. The appellant could have gained nothing by the erroneous filing, save the immediate loss of her filing fee. The erroneous filing was, therefore, a nullity for all purposes. In a case arising under the Timber and Stone Act (33 Stat. 59), the Secretary held:

It is very unfortunate that the alleged error was made in the matter of the description of the desired lands. That mistake, however, claimant, through her agent, is solely responsible for.

If these affidavits describe the wrong lands or lands not desired by the applicant, the essential requisite for the allowance of an entry is wanting. An application to enter, of necessity, is addressed to a specific tract, and to correct an error in that respect is, in effect, to make a new application. [Emphasis added.] <sup>1/</sup>

---

<sup>1/</sup> Annie Davies, 34 L.D. 539, 540 (1906).

The erroneous filing being a legal nullity, it cannot affect appellant's statutory preference rights derived from the correctly executed card. Accordingly, I respectfully dissent from the opinion of the majority.

---

Newton Frishberg  
Chief Administrative Judge

